

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

916L0031

SENATE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to AURORA-----Assaults.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 22-18-1 be amended to read as follows:

4 22-18-1. Any person who:

5 (1) Attempts to cause bodily injury to another, ~~other than a law enforcement officer~~
6 ~~engaged in the performance of official duties~~, and has the actual ability to cause
7 the injury;

8 (2) Recklessly causes bodily injury to another;

9 (3) Negligently causes bodily injury to another with a dangerous weapon;

10 (4) Attempts by physical menace or credible threat to put another in fear of imminent
11 ~~serious~~ bodily harm, with or without the actual ability to ~~seriously~~ harm the other
12 person; or

13 (5) Intentionally causes bodily injury to another which does not result in serious
14 bodily injury; ~~is guilty of simple assault.~~

15 is guilty of simple assault. Simple assault is a Class 1 misdemeanor. However, if the defendant
16 has been convicted of, or entered a plea of guilty to, two or more violations of § 22-18-1, 22-18-



1 1.1, 22-18-26, or 22-18-29 within five years of committing the current offense, the defendant
2 is guilty of a Class 6 felony for any third or subsequent offense.

3 Section 2. That § 22-18-1.1 be amended to read as follows:

4 22-18-1.1. Any person who:

5 (1) Attempts to cause serious bodily injury to another, or causes such injury, under
6 circumstances manifesting extreme indifference to the value of human life;

7 (2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous
8 weapon;

9 ~~(3) Attempts to cause or knowingly causes any bodily injury to a law enforcement~~
10 ~~officer or other public officer engaged in the performance of the officer's duties;~~

11 (4) Assaults another with intent to commit bodily injury which results in serious
12 bodily injury;

13 (5) Attempts by physical menace with a deadly weapon to put another in fear of
14 imminent serious bodily harm; or

15 ~~(6) Is a convicted person under the jurisdiction of the Department of Corrections and~~
16 ~~attempts to cause, or knowingly causes bodily injury to a Department of~~
17 ~~Corrections employee, or authorized visitor, volunteer, or person under contract~~
18 ~~assigned to the Department of Corrections; or~~

19 (7) Intentionally or recklessly causes serious bodily injury to an infant, less than three
20 years old, by causing any intracranial or intraocular bleeding, or swelling of or
21 damage to the brain, whether caused by blows, shaking, or causing the infant's
22 head to impact with an object or surface; ~~is guilty of aggravated assault.~~

23 ~~Aggravated assault is a Class 3 felony. However, a violation of subdivision (7) is~~
24 ~~a Class 2 felony. A second or subsequent violation of subdivision (7) is a Class 1~~

1 felony.

2 is guilty of aggravated assault. Aggravated assault is a Class 3 felony.

3 Section 3. That chapter 22-18 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Simple assault, as provided in § 22-18-1, if committed against a law enforcement officer,
6 Department of Corrections employee or person under contract assigned to the Department of
7 Corrections, or other public officer, which assault occurred while such officer or employee was
8 engaged in the performance of the officer's or employee's duties, is a Class 6 felony.

9 Aggravated assault, as provided in § 22-18-1.1, if committed against a law enforcement
10 officer, Department of Corrections employee or person under contract assigned to the
11 Department of Corrections, or other public officer, which assault occurred while such officer
12 or employee was engaged in the performance of the officer's or employee's duties, is a Class 2
13 felony.

14 Section 4. That § 22-18-1.2 be amended to read as follows:

15 22-18-1.2. Any person who assaults a pregnant woman and inflicts bodily injury on an
16 unborn child who is subsequently born alive is guilty of simple assault. Bodily For the purposes
17 of this section, the term, bodily injury, does not include the inducement of the unborn child's
18 birth ~~when~~ if done for bona fide medical purposes.

19 Section 5. That § 22-18-1.3 be amended to read as follows:

20 22-18-1.3. Any person who assaults a pregnant woman and inflicts ~~great~~ serious bodily
21 injury on an unborn child who is subsequently born alive is guilty of aggravated assault.

22 Section 6. That § 22-18-2 be amended to read as follows:

23 22-18-2. To use or attempt to use or offer to use force or violence upon or toward the person
24 of another is not unlawful ~~when~~ if necessarily committed by a public officer in the performance

1 of any legal duty or by any other person assisting ~~him~~ the public officer or acting by ~~his~~ the
2 public officer's direction.

3 Section 7. That § 22-18-3 be amended to read as follows:

4 22-18-3. To use or attempt to use or offer to use force or violence upon or toward the person
5 of another is not unlawful ~~when~~ if necessarily committed by any person in arresting ~~one~~
6 someone who has committed any felony, ~~and or in~~ delivering ~~him~~ that person to a public officer
7 competent to receive him or her in custody.

8 Section 8. That § 22-18-4 be amended to read as follows:

9 22-18-4. To use or attempt to use or offer to use force or violence upon or toward the person
10 of another is not unlawful ~~when~~ if committed either by ~~the party~~ any person about to be injured,
11 or by any other person in ~~his~~ the aid or defense of a person about to be injured, in preventing or
12 attempting to prevent an offense against his or her own person, or in preventing any trespass or
13 other unlawful interference with real or personal property in his or her lawful possession;
14 ~~provided. However,~~ the force or violence used ~~is not~~ cannot be more than that sufficient to
15 prevent such offense.

16 Section 9. That § 22-18-5 be amended to read as follows:

17 22-18-5. To use or attempt to use or offer to use force upon or toward the person of another
18 is not unlawful if committed by a parent or the authorized agent of any parent, or by any
19 guardian, teacher, or other school official, in the exercise of a lawful authority to restrain or
20 correct ~~his~~ the child, pupil, or ward and if restraint or correction has been rendered necessary
21 by the misconduct of ~~such~~ the child, pupil, or ward, or by ~~his~~ the child's refusal to obey the
22 lawful command of such parent, or authorized agent, guardian, teacher, or other school official,
23 and the force used is reasonable in manner and moderate in degree.

24 Section 10. That § 22-18-6 be amended to read as follows:

22-18-6. A carrier of passengers or the authorized agent or servant of such carrier or any person assisting ~~him~~ such person at his or her request, may use or attempt to use or offer to use force to expel any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers if the vehicle carrying the passenger has first been stopped and the force used is not more than is sufficient to expel the offending passenger with reasonable regard for ~~his~~ the passenger's personal safety.

Section 11. That § 22-18-26 be amended to read as follows:

22-18-26. Any convicted person or any incarcerated person under the jurisdiction of the Department of Corrections who intentionally throws, smears, spits, or otherwise causes blood, ~~emesis vomit, saliva~~, mucus, semen, excrement, urine, or human waste to come in contact with a Department of Corrections employee, or visitor, or ~~volunteer~~ person authorized by the Department of Corrections, or person under contract assigned to the Department of Corrections is guilty of a Class 6 felony.

Section 12. That § 22-18-26.1 be amended to read as follows:

22-18-26.1. Any person who, with the intent to assault, throws, smears, spits, or causes human blood, ~~emesis vomit, saliva~~, mucus, semen, excrement, urine, or human waste to come in contact with ~~a law enforcement officer as defined in subdivision 22-1-2(22), a firefighter, a court services officer or designee, or an emergency medical technician, while performing official duties or actions~~ any other person, is guilty of a Class 1 misdemeanor.

Section 13. That § 22-18-27 be repealed.

~~22-18-27. A penitentiary sentence arising from a conviction pursuant to § 22-18-26 may not commence until the expiration, with no allowance of good time, of the last sentence of imprisonment.~~

Section 14. That § 22-18-28 be repealed.

~~22-18-28. An inmate sentenced pursuant to § 22-18-26 shall serve the entire term of the sentence and is not eligible for parole release as authorized under chapter 24-15A.~~

Section 15. That § 22-18-29 be amended to read as follows:

22-18-29. Any adult confined in a county or municipal jail who intentionally throws, smears, spits, or otherwise causes blood, ~~emesis~~ vomit, saliva, mucus, semen, excrement, urine, or human waste to come in contact with a county or municipal jail employee, or visitor, or ~~volunteer person~~ authorized by the county or municipal jail, or person under contract assigned to the county or municipal jail is guilty of a ~~Class 1 misdemeanor~~ Class 6 felony.

Section 16. That § 22-18-29.1 be amended to read as follows:

22-18-29.1. Any juvenile confined in a juvenile detention facility or a juvenile corrections facility established and maintained in accordance with § 26-11A-1 who intentionally throws, smears, spits, or otherwise causes blood, ~~emesis~~ vomit, saliva, mucus, semen, excrement, urine, or human waste to come in contact with a juvenile detention or juvenile corrections facility employee, or visitor, or ~~volunteer person~~ authorized by the juvenile detention or juvenile corrections facility, or person under contract assigned to the juvenile detention or juvenile corrections facility is guilty of a ~~Class 2 misdemeanor~~ Class 6 felony.

Section 17. That § 22-18-30 be amended to read as follows:

22-18-30. Any conviction for, or plea of guilty to, an offense in another state which, if committed in this state, would constitute a violation of § 22-18-1, 22-18-1.1, 22-18-26, or 22-18-29, and which occurs within five years prior to the date of the violation being charged, shall be used to determine if the violation to be charged is a third or subsequent offense pursuant to § 22-18-1.

Section 18. That § 22-18-31 be amended to read as follows:

22-18-31. Any person who, knowing himself or herself to be infected with HIV,

intentionally exposes another person to infection by:

- (1) Engaging in sexual intercourse or other intimate physical contact with another person;
- (2) Transferring, donating, or providing blood, tissue, semen, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV transmission;
- (3) Dispensing, delivering, exchanging, selling, or in any other way transferring to another person any nonsterile intravenous or intramuscular drug paraphernalia that has been contaminated by himself or herself; or
- (4) Throwing, smearing, or otherwise causing blood or semen, to come in contact with another person for the purpose of exposing that person to HIV infection; is guilty of criminal exposure to HIV. ~~Criminal exposure to HIV is a Class 3 felony.~~

Criminal exposure to HIV is a Class 3 felony.

Section 19. That § 22-18-32 be amended to read as follows:

22-18-32. Terms used in §§ 22-18-31 to 22-18-34, inclusive, mean:

- (1) "HIV," the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome;
- (2) "Intimate physical contact," bodily contact which exposes a person to the body fluid of the infected person in any manner that presents a significant risk of HIV transmission; and
- (3) "Intravenous or intramuscular drug paraphernalia," any equipment, product, or material of any kind which is peculiar to and marketed for use in injecting a substance into the human body.

1 Section 20. That § 22-18-33 be amended to read as follows:

2 22-18-33. It is an affirmative defense to prosecution ~~under~~ pursuant to § 22-18-31, if it is
3 proven by a preponderance of the evidence, that the person exposed to HIV knew that the
4 infected person was infected with HIV, knew that the action could result in infection with HIV,
5 and gave advance consent to the action with that knowledge.

6 Section 21. That § 22-18-34 be amended to read as follows:

7 22-18-34. Nothing in §§ 22-18-31 to 22-18-34, inclusive, may be construed to require the
8 actual transmission of HIV in order for a person to have committed the offense of criminal
9 exposure to HIV.